FEDERAL SCHOLARSHIP TAX CREDIT COALITION

A 50-State Group Committed to Successful Implementation of the New FSTC

December 24, 2025

Mr. Edward Waters
Office of the Associate Chief Counsel (Income Tax & Accounting)
Internal Revenue Service
Room 5503
P.O. Box 7604
Ben Franklin Station, Washington, DC 20044

Subject: Notice 2025-70

We represent the Federal Scholarship Tax Credit (FSTC) Coalition, a nationwide coalition of more than 200 school choice advocates, allies, scholarship granting organizations, and schools committed to successful implementation of § 25F in every state and Washington, D.C. The core members of our group are Agudath Israel of America, American Federation for Children, Defense of Freedom Institute, EdChoice, and the United States Conference of Catholic Bishops (USCCB). Collectively we have spent decades successfully passing and implementing school choice programs, including scholarship tax credit programs, in more than two dozen states across the country. In addition, Agudath Israel and USCCB also represent thousands of Jewish and Catholic schools throughout the United States.

We are grateful to the Administration and the Treasury Department for this opportunity to provide public comment and for consideration of our views. We are pleased to respond to Treasury's Request for Public Comment.

1. **State Elections (Opt-In) and SGO List**

Issue: How a state opts-in and provides a list of SGOs that meet federal requirements.

In Section 3.02, Treasury anticipates requiring a covered state to list *all* the compliant scholarship granting organizations (SGOs) in their state—no picking and choosing. We completely agree. This is critically important and consistent with Congressional intent.

Also consistent with Congressional intent, we agree that SGOs may "impose additional governing provisions" that will give SGOs the flexibility to specialize in a given area or customize who they serve and what types of expenses they will cover all within the limits provided in the law. This would include limiting scholarships to students with lower incomes or who attend specific private or public schools, or an SGO could choose to focus only on tutoring or special needs services.

In Section 3.02, Treasury acknowledges it will take time for SGOs to prepare for the January 1, 2027, effective date of the law. We are grateful to Treasury for the release of Revenue Procedure 2026-6, which will permit States to begin opting in after January 1, 2026. That Revenue Procedure wisely prioritizes the needs of students and families by allowing SGOs to ramp up in preparation for 2027. Section 2.04 notes that: "Not later than January 1 of each calendar year (or, with respect to the 2027 calendar year, as early as practicable), a State that voluntarily elects to participate under §25F must provide to the Secretary of the Treasury or the Secretary's delegate (Secretary) a list of the SGOs that meet the requirements described in § 25F(c)(5) and are located in the State (State list)".

In Section 3.03 Treasury said that self-certification by SGOs alone will not be sufficient. In Section 3.04, Treasury anticipates that its rules will require states to verify SGO compliance with the federal law's requirements.

Recommendations: We urge Treasury to provide guidance beyond what was in the Revenue Procedure 2026-6 to ensure that if a State opts-in during 2026, it is binding through 2027, and a State cannot rescind the opt-in for the first year. This is necessary to prevent any uncertainty for SGOs, schools, families, and students.

Regarding submission of SGO lists, we urge Treasury to provide guidance to confirm that "as early as practicable" in §25F(g)(1)(A) also encompasses calendar year 2027 because many new Governors will take office during January 2027, and it may not be "practicable" for them to act until after their inaugurations. While Treasury has correctly focused on the year before 2027, Congress also recognized through its plain language that some states might need a grace period into 2027. In addition, we urge Treasury to allow States to make rolling submissions of SGO lists, rather than a single, one-time submission. The statute has a deadline of January 1st, and final lists should be submitted by then. Although the RPC implied that an arbitrary deadline could be set by Treasury before January 1st, the portal should be open until the last day to submit SGO lists. The statute does not prohibit multiple opportunities for States to add SGOs as they verify their lists, and the extra time to prepare for January 1, 2027, would benefit students.

Regarding State certification of SGO compliance, the statute does not give States a certification role, so by the use of this term, we believe Treasury means only that a State or governor must

verify what it can reasonably do. This should be clarified in guidance. A covered state is simply asked to submit the list of SGOs. Using the term "certify" to describe the states' requirements creates two significant concerns: 1) it opens the door for political bias and unnecessary bureaucratic hurdles (which conflicts with Treasury's recognition that there should be no picking and choosing of SGOs); and 2) it seems to imply that state officials have some liability for future SGO actions should an SGO not perform as planned in the following year, perhaps discouraging states from participating.

We recommend Treasury require SGOs to submit a sworn compliance affidavit attesting that they meet all statutory requirements, accompanied by documentation demonstrating compliance. This documentation should include materials such as an independent report prepared by an independent licensed professional, such as a Certified Public Accountant (CPA), who has reviewed the organization's financial records and confirmed adherence to the law's requirements. This approach ensures accountability and legal enforceability without introducing a state-level investigative process, while providing Treasury with objective verification from a qualified third party.

Further, we recommend that Treasury establish a process for SGOs to appeal their exclusion from a state's SGO list.

Finally, consistent with prioritizing continuance of student scholarships in in (d)(1)(D), we recommend guidance to say that governors/states may not remove an SGO from the list for any reason other than falling out of compliance with the law.

2. LOCATED IN THE STATE

Issue: How will the requirement that an SGO be "located in the State" be interpreted?

Recommendation: For the question in Section 3.05, we believe Treasury should conclude that organizations authorized to operate and do business in the state are considered located in the state. SGOs should not have to be headquartered in the state or physically located in the state to distribute scholarships funded by federal scholarship tax credit (FSTC) donations. A state's normal business law applicable to nonprofits should apply.

3. INTERACTIONS WITH STATE-BASED CREDITS

Issue: What information can a State provide to the IRS to ensure taxpayer compliance with this requirement?

In Section 3.06 Treasury notes the law requires that the amount of a credit allowed under the federal law must be reduced by the amount allowed as a State tax credit for qualified contributions made by a taxpayer during the taxable year.

Recommendations: Treasury should clarify that this clause means that if a state tax credit scholarship program offers a non-refundable 100 percent state credit, and the donor makes a donation to an SGO approved for both state and federal tax credits, the same donation may not be used to take both a state and a federal tax credit. For example, if the donor contributes $1000 to a state SGO and chooses to have $500 count for their state program (or in the case of Indiana where the maximum state credit is 50% and therefore the donor may not take more than $500 as a state credit) they may only take a federal tax credit on the remaining $500. However, if the donor contributes two separate $1000 donations they can receive a state credit for $1000 and the federal credit for $1000.

Reducing the amount of a contribution eligible for a federal tax credit should only apply to those donors who claim or indicate in writing their intent to claim a state tax credit. A taxpayer may want or need a state tax credit more than a federal tax credit, or vice versa, and this election by the taxpayer should be at the taxpayer's discretion, provided the taxpayer does not attempt to claim both a state and federal tax credit for the same money.

There are only a handful of states that offer individuals less than a 100 percent state credit, and the law states the amount of the federal credit must be reduced by the amount allowed as a state credit. For example, Indiana has a 50 percent state credit. If a donor contributes $3,400 to an Indiana SGO, then $1,700 would qualify for the state credit and the other $1,700 would qualify for the federal credit. Reducing the amount of a contribution eligible for a federal tax credit should only apply to those donors who claim or indicate in writing their intent to claim a state tax credit. A taxpayer may want or need a state tax credit more than a federal tax credit, or vice versa, and this election by the taxpayer should be at the taxpayer's discretion, provided the taxpayer does not attempt to claim both a state and federal tax credit for the same money.

4. 90% OF "INCOME" FOR SCHOLARSHIPS

Issue: In Section 4.01, Treasury requests comment on §25F(d)(1)(B) that an SGO must spend "not less than 90 percent of the income of the organization on scholarships for eligible students". Treasury says they anticipate their rules will say that this provision means *all* income of the organization—not just income received from qualified contributions for the FSTC.

Treasury asks: Does this interpretation pose practical challenges for SGOs? If so, what alternative interpretation would be reasonable under the statute and why would that be a superior interpretation of the law? Should rules address the fact that start-up costs will make it harder to achieve the 90 percent threshold in year one and, therefore, allow for a multiyear calculation?

Recommendations: Treasury's proposed interpretation poses significant practical challenges for existing SGOs and other nonprofits that would like to launch SGOs. Treasury should interpret the 90 percent of income in the context of 25F to mean 90 percent of qualified contributions, **not to all the income streams of the organization.** Congress clearly intended the 90 percent threshold to apply solely to FSTC contributions to an SGO. The statute mandates that FSTC contributions must be held in a segregated account (see (c)(5)(B), indicating that they wanted these funds to be managed separately. This language obviously assumes that an SGO may have other income not attributable to the FSTC. Any other interpretation would render meaningless this language of the statute.

Treasury's anticipated interpretation creates needless burdens on existing SGOs and other nonprofits, as well as other obstacles to success. Each interested group would have to create new SGOs and apply for tax-exempt status under Section 501(a)--a process that takes several months. That is labor and money that should go to students and their families rather than a bureaucratic burden that serves no practical purpose, and there is no language in the FSTC that implies such a requirement. If, for example, supporters of a privately funded SGO decided to fund the startup of a new FSTC-dedicated SGO, all but 10 percent of their tax-exempt contributions would have to be used for scholarships, as if they were tax-credited donations.

Throughout the law, Congress assumes that existing state-based and privately funded SGOs would be allowed to distribute FSTC scholarships on top of existing K-12 scholarship programs. This would be difficult, if not impossible to do if Treasury decides Section 25F somehow encompasses all of an SGO's revenue and income.

Treasury should also resolve this ambiguity of the term "income" in this context to honor Congress's intent to increase school choice. That goal would be seriously undermined if Treasury interprets the FSTC's 90 percent rule to require current SGOs and other nonprofits – those best positioned to make the FSTC a success – to choose between offering FSTC scholarships or state-based and private scholarships. Treasury's interpretation creates an all or nothing proposition for any nonprofit seeking to provide scholarships under section 25F; commit all donations to FSTC or forego participation under section 25F. This position is unsupported in the statute.

Similarly, subsection §25F(d)(1)(C) prohibits scholarships for expenses other than those allowed under §530(b)(3)(A): "such organization does not provide scholarships for any expenses other than qualified elementary or secondary education expenses," If the words "does not provide" means from all of the funds of the entire organization it means existing SGOs in states that have a different eligibility criteria (e.g., universal income eligibility for students with special needs) or allowable uses for scholarships (e.g., pre-k) would risk losing their status as an SGO if they award even a single scholarship according to their state rules. The superior reading would be to

limit this clause to the FSTC donations. It would be unreasonable to make an existing SGO choose between serving students through its state's tax credit scholarship program or through the FSTC; and creating new SGOs will also be an unnecessary burden on the IRS.

Once Treasury determines that the 90 percent of income would be calculated using just FSTC contributions, we recommend that Treasury explicitly allow SGOs to supplement the 10 percent allowed for the full range of non-scholarship costs with other tax-exempt contributions, including in-kind or service donations. SGOs will be facing a variety of administrative, programmatic, and fundraising costs, often months before SGOs can raise FSTC contributions. By allowing SGOs to use tax-exempt donations to cover such costs, it will help ensure that 90 percent of FSTC contributions are indeed used for scholarships. To make sure these supplements for non-scholarship expenditures do not complicate accounting of the segregated accounts, the host SGO should be explicitly allowed to shift up to 10 percent of the amount raised through the FSTC from the segregated account and into its general fund. This has been common practice for state SGOs for many years, and it works well.

We recommend that Treasury confirm that accrual accounting may be used to calculate the "90 percent of income" provision. It is common among SGOs to commit to multi-year scholarship aid, assuring families that, for example, their child has a scholarship commitment through elementary school grades. This practice is reflected in subsection (d)(1)(D) requiring SGOs to give past scholarship recipients priority in awards.

Finally, we recommend that the 90 percent be calculated on a rolling three-year average for two reasons. First, it will be necessary to accommodate higher than normal startup costs as SGOs put in place their systems for fundraising, designing, and distributing scholarships, and verifying recipient income, among other things. Second, SGOs will face challenges because of the normal timing of donations and scholarship distributions. Charitable donations are commonly made near the end of the year, while scholarships are often not awarded until months later in the spring of the following year and not disbursed until the following school year. The rolling average would accommodate this cross-year delay.

5. **MULTI-STATE SGOs**

Issue: In Section 4.02, Treasury asks how to handle multi-state SGOs given the requirement that contributions must be used to fund scholarships for students "solely within the State in which the organization is listed." Treasury anticipates requiring multi-state SGOs to ask donors what state they want their contribution to be directed toward.

Treasury is asking: Should the "10 students at more than one school" apply per state, or total? In other words, if a multi-state SGO is operating in 20 states, can they give scholarships to a single school in California? Or does the "more than one school requirement" hold for each state?

Should the 90 percent requirement be calculated on a state-by-state basis, or in the national aggregate?

Recommendations: Donors may be asked to specify which state they want their contribution to be directed toward, but they should not be required to do so, giving the SGOs flexibility to direct to the greatest area of need. While this will be important for all years, it will be especially important in the first year as states determine whether they will voluntarily allow students to receive scholarships in their jurisdiction. Taxpayers should not be denied the tax credit merely because they select a state which ultimately decides not to opt in.

In addition, to accommodate the needs of as many students as possible, SGOs should be allowed to provide scholarships to students who either reside in a covered state or attend a school in their state. If a student who resides in a covered state attends military, private, or boarding school in a non-covered state, he or she could receive scholarship support from the SGO operating in the student's state of residence. If a student whose residence is in a non-covered state attends school in a covered state, such student could receive a scholarship from the SGO operating in the covered state. In both cases, the student should satisfy the otherwise undefined term of being "solely within the state" as required under subsection (c)(3).

6. DISQUALIFIED PERSON

Issue: Section 4.04 addresses §25F's prohibition on awarding scholarships to disqualified persons and the definition should be "similar to" Section 4946 of the tax code. Section 4946 of tax code applies to private foundations, which are expressly prohibited from participating in the FSTC. Treasury is considering modifying this definition to say that any person who contributed more than 2 percent of the total contributions of the SGO in a year would be considered disqualified, as would their family. They also anticipate ruling that an individual who is part of the SGO's scholarship selection committee (or their immediate family) is disqualified.

Treasury asks: Is there a better interpretation of this part of the law? Are there any circumstances under which that person should not be considered disqualified?

Recommendations: The best approach is for Treasury to disqualify major donors, defined as those giving $5,000 to an SGO, if such amount is more than 2 percent of the total contributions to the SGO. Using only the two percent cap would mean that if an SGO received less than 51 donations in a year, every donor who gave the maximum of $1,700 would have their child be disqualified. In practice, this would prevent small SGOs from opening and serving families locally.

The law's language makes clear that Congress wanted to prevent self-dealing, conflicts of interest, and donors directing scholarships toward particular children. However, in limited and well-documented circumstances, an SGO board member's child should be allowed to receive an award if there is no conflict. This includes situations where scholarship applications are reviewed using blind or anonymized procedures—such as committee review without identifying information, randomized selection processes, or computer-based scoring.

7. REPORTING AND RECORDKEEPING

Issue: In Section 4.05, Treasury anticipates requiring SGOs to report certain information to the IRS and to retain certain records to ensure the law's requirements are met. This may include information on each qualified contribution received, including the donor's TIN and information on scholarship recipients.

Treasury asks a series of questions:

- How should reporting requirements be designed such that the IRS gets the information they need, but also that the SGO isn't overly burdened?
- What types of reporting requirements do states with these tax credits have?
- How should an SGO verify student eligibility (tax returns, etc.)?
- Because the law prevents comingling of funds, how should an SGO determine that cash received from a donor is intended to be a qualified contribution that needs to be segregated? Should a donor provide this info?
- What documentation should an SGO provide to a donor to demonstrate that they made a qualified contribution?
- Should an SGO be required to inform the donor that only the first $1,700 is FSTC eligible?
- Should they be required to inform donors that additional donations may qualify for a deduction?
- Should they be required to inform donors that any FSTC donation must be reduced by the credit received on their State taxes?

Recommendations: Recordkeeping should not be overly burdensome or onerous, because that will eat away at the amount of funds available for students. SGOs should not be required to collect or report Privately Identifiable Information from every donor—instead, the same reporting rules that govern charitable donations for tax-deduction purposes should govern FSTC donations. Similar to that process, the SGO should provide the donor a written statement acknowledging receipt of the contribution and stating that the donor received no value for that donation.

Verifying income can be done in a variety of ways. Several existing entities have access to IRS data, allowing them to verify prior year income quickly and less expensively. If manual processes are needed, SGO or their agents should be allowed to use federal or state income tax returns or transcripts with applicable schedules for the prior taxable year; IRS wage and income transcripts; income reporting statements for tax purposes; notarized income verification letters from employers; unemployment or workers' compensation statements; budget letters regarding public assistance payments including SNAP benefits.

To further streamline verification and reduce administrative burden for families and SGOs, Treasury should explore enabling automated access to gross income from the parent's tax return with consent, similar to FAFSA's previous Data Retrieval Tool.

We believe SGOs, in the interest of maximizing their contributions under FSTC would naturally provide donors with important information such as: only the first $1,700 is FSTC eligible; anything above $1,700 would potentially qualify for a federal tax deduction; and what portion of a given donation can be allotted to federal and state credits. In some states donations to the state tax credit program will be obvious as they have specific portals or forms that make donors intent known. Ultimately it is up to the donor to file state and federal tax returns and request credits. The SGO will not know or track if the donor actually claimed a credit, nor should it matter. SGOs will assume all donations are restricted by the FSTC rules unless the donor makes it known to them in writing (including a check box on a website) or by donating more than $1700 where the excess funds are clearly not eligible for a FSTC.

If a state tax credit scholarship program offers a non-refundable 100 percent state credit, and the donor makes a donation to an SGO approved for both state and federal tax credits, the same donation may not be used to also take a federal tax credit. For example, if the donor contributes $1000 to a state SGO and chooses to have $500 count for their state program they may only take a federal tax credit on the remaining $500. This would apply as well in states that offer partial state credit such as Indiana where donors receive a 50 percent tax credit. A donor who contributes $1000 to an SGO could receive $500 as a state tax credit and $500 on their federal returns. If the donor contributes two separate donations they can receive the state credit and the federal credit.

OTHER ISSUES

Issue: Does "any taxpayer" mean that a married couple filing jointly can contribute $3,400 or are they limited to $1,700.

Recommendation: A proper reading of the statute and governing IRS precedent makes clear that the giving limitation applies per individual, allowing married couples filing jointly to give $3,400. Lawmakers included the phrase "any taxpayer," which would have been left out if the limit was only intended to apply per tax return, and there is no language within the FSTC supporting a different interpretation. IRS regulations generally recognize that a joint return consists of two taxpayers. For example, 26 CFR §1.6013-4(b) states, "Although there are two taxpayers on a joint return, there is only one taxable income." Tax court decisions have repeatedly confirmed that spouses on a joint return remain separate "taxpayers" absent express statutory merger. For example, *Dolan v. Commissioner* (1965) and *Anne Goyne Mitchell* (1969) treat each spouse independently for assessment and notice. *Rodney v. Commissioner* (1969) and *Moore v. United States* (1965) treat spouses filing jointly as separate taxpayers when it comes to criminal proceedings.

If Congress had intended for the FSTC allowance to be denied to one of two taxpayers filing a joint return, such language would have been included in the FSTC, as is the usual practice for tax statutes that seek to treat joint filers as one taxpayer. For example, under the Casualty Loss Deduction, the law specifically clarifies, "For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as one individual."

Accommodate Taxpayers Taking the Standard Deduction and Ease of Donating

Issue: It should be as easy as possible for taxpayers to contribute to SGOs.

Recommendation: The FSTC is available to any taxpayer with a federal income tax liability, and not just taxpayers who itemize and complete Schedule A. The IRS is reportedly amending Form 1040 so that non-itemizers can take a charitable deduction of $1,000 for individuals and $2,000 for joint filers. We encourage Treasury to take a parallel approach for non-itemizers who contribute to eligible SGOs and qualify for the FSTC, essentially allowing them to check a box that says, "I/We have contributed $1,700/$3,400 to an eligible scholarship granting organization." If helpful, the taxpayer can be asked to indicate the name of the recipient SGO. It is too much and unnecessary to ask them for the SGOs. This should be no different than donating $10,000 to a charity or using a 529/530 account. When a taxpayer files for deductions, they do not include the name of each organization they have donated to. If the IRS wants to audit the taxpayer or the charity, the documents will verify the donation.

We believe that many taxpayers would donate to SGOs via payroll deductions if the option is provided by their employers. Employers could work with a single or several SGOs, and employees could opt in, choose an eligible SGO, and indicate the amount that would be transferred to the SGO through payroll. (The net amount on the employee's paycheck would not change.) This would streamline the acquisition of donations and make more money available for scholarships.

The SGO could, of course, provide documentation to the employee that the FSTC donations have been received. However, to facilitate this payroll-deduction mechanism, Treasury could allow the employer to report the total amount contributed on Form W-2. Treasury should also modify the W-4 instructions for 2027 so that the FSTC is an example of a credit that would adjust withholdings. Employees could also use their W-4 to direct their employer to deduct the SGO contribution from payroll and transfer the donation directly to an SGO.

Affirming religious liberty and private school autonomy

Issues: Is the text of the FSTC law adequate to ensure that expenses for religious education are deemed eligible to the same extent as expenses at public or non-religious schools? Will Treasury's regulations prevent the FSTC from being used as a means of interfering in the autonomy of participating SGOs or schools that benefit from the FSTC – especially religious SGOs and schools?

Recommendation: Allowable expenses for the scholarship tax credit are linked to Section 530, Coverdell Education Savings Accounts, which specifically permits use at religious schools. We believe Treasury should explicitly clarify that no otherwise eligible expense can be excluded simply because it is for religious education and that no otherwise eligible expense can be excluded because of the religious nature, character, affiliation, policies, or practices of the school that receives it.

Because Section 3.03(6) of Treasury's request for comment appears to contemplate that states will engage in ongoing oversight of listed SGOs – an approach that, as explained above, we oppose – Treasury should take steps to ensure that such oversight is not misused to interfere in the autonomy of SGOs or the schools at which their awarded scholarships are spent. To that end, Treasury's regulations should specify that "Nothing in this part shall be construed to permit, allow, encourage, or authorize any Federal, State, or local government entity, or officer or employee thereof, to mandate, direct, or control any aspect of any scholarship granting organization or of any private or religious elementary or secondary education institution."

Conclusion

Thank you again for the opportunity to share these comments. We stand ready to continue sharing our expertise to help the Treasury Department develop rules that achieve Congress's goal of expanding school choice in America. For this law to be successful we must have practical and effective rules that are faithful to Congressional intent. Our goals are simple: make it as easy as possible for SGOs to participate; make it as easy as possible for taxpayers to contribute; and maximize the number of students who will benefit - all while maintaining fidelity to the law and safeguarding the integrity of the law.

Sincerely,

The FSTC Coalition Working Group:

Agudath Israel of America
American Federation for Children
Defense of Freedom Institute
EdChoice
United State Conference of Catholic Bishops